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In the

**United States Circuit Court
of Appeals**

For the Ninth Circuit

No. _____

BACON & MATHESON FORGE CO., JOHN
PAUL LUMBER COMPANY, SCHWABACHER
HARDWARE CO., AXEL OLSEN, CHARLES
MARTINSEN, WEST SEATTLE BOAT & EN-
GINE CO., M. H. MARTINSEN, E. L. MARTIN-
SEN, FRED SKOOG, WALTER TURNQUIST,
CHRIST CHRISTENSEN, J. A. ENGSTROM, R.
M. PENDLETON and H. G. McLAUGHLIN CO.,
Appellants

vs.

UNITED STATES OF AMERICA,
Appellee.

TRANSCRIPT UPON APPEAL

FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

JAMES KIEFER,
Attorney for Appellants.

HON. THOS. P. REVELLE,
United States Attorney.
HON. JOHN A. FRATER,
Assistant United States Attorney.
and
HON. CHAS. P. MORIARTY,
Assistant United States Attorney.
Attorneys for Appellee.

FILED

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I N D E X

	PAGE
Agreed Statement of Facts_____	3
Appeal, Notice of_____	44
Appeal, Petition for_____	47
Clerk's Certificate_____	52
Appeal, Order Allowing and Fixing Bond_____	43
Appeal, Bond on_____	47
Assignments of Error_____	40
Citation _____	45
Decree of Dismissal_____	38
Exhibits to Agreed Statement of Facts:	
Petitioners' Exhibit 1_____	21
Petitioners' Exhibit 2_____	22
Petitioners' Exhibit 3_____	24
Government Exhibit A_____	32
Government Exhibit B_____	34
Memorandum Decision _____	37
Stipulation as to Record_____	50



Main 1225
96 Spring Street
Seattle

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Appellants

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UNITED STATES OF AMERICA,
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TRANSCRIPT UPON APPEAL

FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

**In the District Court of the United States for
the Western District of Washington, North-
ern Division.**

No. 283-E

BACON & MATHESON FORGE CO., JOHN
PAUL LUMBER COMPANY, SCHWABACHER
HARDWARE CO., AXEL OLSEN, CHARLES
MARTINSEN, WEST SEATTLE BOAT & EN-
GINE CO., M. H. MARTINSEN, E. L. MARTIN-
SEN, FRED SKOOG, WALTER TURNQUIST,
CHRIST CHRISTENSEN, J. A. ENGSTROM, R.
M. PENDLETON and H. G. McLAUGHLIN CO.,

Petitioners and Appellants.

vs.

UNITED STATES OF AMERICA,
Appellee.

JAMES KIEFER,
Attorney for Appellants.

HON. THOS. P. REVELLE,
United States Attorney.

HON. JOHN A. FRATER,
Asst. United States Attorney.

and

HON. CHAS. P. MORIARTY,
Asst. United States Attorney.

Attorneys for Appellee.

All of Seattle, Washington.

December 21, 1921, Petition;

February 14, 1922, Special appearance and Motion
to Quash and Motion to Dismiss;

April 29, 1922, Memorandum decision motion to quash service denied;

April 29, 1922, Memorandum decision motion to dismiss granted;

May 4, 1922, Amended petition;

May 17, 1922, Motion to dismiss amended petition;

July 12, 1922, Memorandum decision motion to dismiss amended petition granted;

July 20, 1922, Petition for re-hearing on motion to dismiss amended petition;

July 20, 1922, Memorandum decision granting motion for re-hearing;

November 6, 1922, Motion to dismiss amended petition denied;

March 5, 1923, Answer;

July 2, 1923, Agreed Statement of Facts;

July 6, 1923, Memorandum decision petitioners can not recover;

July 14, 1923, Judgment of Dismissal with costs;

July 16, 1923, Petition for Appeal;

Order allowing appeal and fixing bond filed;

Assignments of Error;

Notice of Appeal;

Appeal bond approved;

Citation issued;

July 17, 1923, Stipulation as to record.

**United States District Court, Western District
of Washington, Northern Division.**

No. 283-E

BACON & MATHESON FORGE COMPANY, et al,
Petitioners.

vs.

UNITED STATES OF AMERICA.

AGREED STATEMENT OF FACTS

For the purpose of shortening the trial and saving expense of proving undisputed facts, the petitioners and the United States agree that the facts involved herein are as follows:

I.

On May 21, 1920, the United States of America sold a public vessel, the sub-chaser No. 293, to George L. Harvey and Joseph Kildall. The terms of the sale were \$25.00 cash and a mortgage for \$14,975.00 Possession of the vessel was delivered to the parties. Thereafter the claims of the petitioners in this action accrued.

II.

At all times after the beginning of the admiralty proceedings hereinafter mentioned on the 7th day of October, 1920, the petitioners had actual notice of the recording of the mortgage to the United States of America, although the vessel had not been registered or enrolled in accordance with Revised Statutes, Secs. 4192, 4193 and 4194. However, the mortgage document itself had been recorded in the Customs House.

III.

Thereafter on November 18, 1920, the United States of America, through the Navy Department, because of default and failure to pay \$14,975.00 or any of the installments, took possession of the vessel which had been seized by the United States Marshal under a libel in an admiralty proceeding, to which these petitioners were parties. Shortly after taking possession of the vessel she was returned by the Navy Department to the custody of the Marshal, in whose custody she remained until the payments hereinafter stated were made by the United States about June 30, 1921.

IV.

The United States District Court in admiralty, upon a hearing of the cause, dismissed the claims of these petitioners, on the ground and for the reason

that they were not maritime liens and not within admiralty jurisdiction. The United States of America then paid the lien claims found due by the United States Court in the admiralty proceeding, and took possession of the vessel.

V.

George L. Harvey and Joseph Kildall, and their successors in interest, executed to the United States certain documents running to the United States, which are hereunto annexed and made a part of this Statement of Facts and marked "Government's Exhibits A and B."

VI.

That the petitioners Bacon & Matheson Forge Co., John Paul Lumber Company, Schwabacher Hardware Co., West Seattle Boat & Engine Co., and H. G. McLaughlin Co., are, and each of them is, and each of them was at all the times herein mentioned, a corporation duly created and existing under and by virtue of the laws of the State of Washington, with their principal places of business in the City of Seattle, and have paid all license fees due to the State of Washington to date.

VII.

That on the 21st day of May, 1920, the United States of America, through the Secretary of the

Navy Department thereunto duly authorized by the President, in the manner provided by law, sold and delivered to George L. Harvey and Joseph Kildall, co-partners as the Seattle Fisheries Association, a certain marine sub-chaser known and designated as Sub-Chaser No. 293, for a cash consideration of twenty-five (\$25.00) dollars and the agreement and promise of the said George L. Harvey and Joseph Kildall, partners as aforesaid, to pay the balance of the purchase money, fourteen thousand nine hundred seventy-five (\$14,975.00) dollars, and a bill of sale for said vessel was executed by the said Secretary of the Navy and delivered to the said parties as well as possession of said vessel.

VIII.

That a certain paper writing, purporting to be a mortgage on said vessel, was executed by said George L. Harvey and Joseph Kildall, co-partners as the Seattle Fisheries Association, running to the United States, and purporting to mortgage said vessel to the United States to secure the balance of said purchase money, to-wit, fourteen thousand nine hundred seventy-five (\$14,975.00) dollars, and in and by said mortgage it was provided and stipulated that certain percentages of the earning of said vessel in the fishing trade should be paid to the United States on account of said mortgage.

IX.

That at the time of the execution of said paper writing purporting to be a mortgage, said vessel had not been registered or enrolled in accordance with the laws of the United States of America in any Custom House in the United States, and said paper writing purporting to be said mortgage was not verified by the mortgagors as required by the statutes of the State of Washington in such case made and provided, and was never recorded in the office of the Auditor of the County of King, in the State of Washington, in which County said vessel was kept at all times during the reconstruction work upon her hereinafter set out.

X.

That said vessel was not registered under the laws of the United States as a vessel until the 4th day of September, 1920.

XI.

That thereupon the said persons took possession of said vessel and proceeded to reconstruct and alter said vessel from a war vessel to a fishing vessel, and said reconstruction and alteration was contemplated by the terms of said mortgage, it being therein provided and stipulated that certain percentages of the earning of said vessel, in the fishing

trade, when so reconstructed, should be paid to the United States on account of said mortgage.

XII.

That thereafter the said George L. Harvey and Joseph Kildall procured the organization of a corporation known as Seattle Trawl Fisheries Association, under the laws of the State of Washington, having its place of business in the City of Seattle, and conveyed said vessel, and delivered said vessel, to said Seattle Trawl Fisheries Association, which proceeded with the work, and assumed all liabilities theretofore contracted for said work, and in the course of said reconstruction and alteration employed these petitioners who furnished labor and materials as hereinafter set out.

XIII.

That between the 11th day of August, 1920, and the 4th day of September, 1920, at the request of the Seattle Trawl Fisheries Association, and its predecessors in interest, the petitioner Bacon & Matheson Forge Co. furnished iron work and similar materials and labor in and about the reconstruction and alteration of said vessel, all of the reasonable value of \$1191.96.



XIV.

That the petitioner John Paul Lumber Company, between the 13th day of July, 1920, and the 10th day of September, 1920, at the request of the said Seattle Trawl Fisheries Association, and its predecessors in interest, furnished lumber for use in the reconstruction and alteration of said vessel, of the reasonable value of \$439.04.

XV.

That the petitioner Schwabacher Hardware Co., at the request of said Seattle Trawl Fisheries Association, and its predecessors in interest, between the 2nd day of August, 1920, and the 5th day of October, 1920, furnished hardware and other metal goods for use in the reconstruction and alteration of said vessel, of the reasonable value of \$610.44, and said petitioner received, through the proceedings hereinafter set out, on account thereof, the sum of \$97.22, leaving a balance due said petitioner of \$513. 22 for said materials so furnished.

XVI.

That the petitioner Axel Olsen, a resident of the City of Seattle, Washington, at the request of the said Seattle Trawl Fisheries Association, and its predecessors in interest, in the months of August and September, 1920, performed labor in and about the reconstruction and alteration of said

vessel, and earned therein the sum of \$139.40, and said petitioner has received, through the proceedings hereinafter set out, \$53.40, leaving a balance due said petitioner of \$86.00.

XVII.

That the petitioner Charles Martinsen, a resident of the City of Seattle, Washington, between the 29th day of July and the 7th day of September, 1920, at the request of said Seattle Trawl Fisheries Association, and its predecessors in interest, performed labor as a shipwright on board of said vessel in and about the reconstruction and alteration of the same, at the agreed rate of wages of \$10.00 per day, for thirty-one (31) days, and during said period said petitioner also advanced to said Seattle Trawl Fisheries Association, and its predecessors in interest, at their request, the sum of \$50.25, to be used in the payment of materials and labor in said reconstruction, and said Charles Martinsen has been paid on account thereof the sum of \$42.00, through the proceedings hereinafter set out, leaving a balance due said petitioner of \$318.25.

XVIII.

That the petitioner West Seattle Boat & Engine Co., in the months of August, September and October, 1920, at the request of said Seattle Trawl Fisheries Association, and its predecessors in in-

terest, furnished materials, dry dock service and dockage in the reconstruction and alteration of said vessel of the reasonable value of \$464.00, and said petitioner has received on account thereof, through the proceedings hereinafter set out, the sum of \$65.00, leaving a balance due said petitioner West Seattle Boat & Engine Co. of \$399.56.

XIX.

That the petitioner M. H. Martinsen, a resident of the City of Seattle, Washington, at the request of said Seattle Trawl Fisheries Association, and its predecessors in interest, performed labor as a ship carpenter on the reconstruction and alteration of said vessel, between July 29, 1920, and September 11, 1920, and earned during said period the sum of \$385.11, and advanced, at the request of said Seattle Trawl Fisheries Association, for the payment of material used in said repairs, the sum of \$4.75, making a total of \$389.96 due said petitioner.

XX.

That the petitioner E. L. Martinsen, a resident of the City of Seattle, Washington, at the request of said Seattle Trawl Fisheries Association, and its predecessors in interest, worked as a shipwright on board said vessel in the said reconstruction and alteration thereof, between July 29th, 1920, and September 7, 1920, at the agreed rate of \$10.00

per day, working in all thirty-one (31) days, and advanced for the use of the said Seattle Trawl Fisheries Association, and used by them in the payment of labor and materials used in said reconstruction, the sum of \$26.24, making a total balance of \$336.24 due said petitioner.

XXI.

That the petitioner Fred Skoog, a resident of the City of Seattle, Washington, at the request of said Seattle Trawl Fisheries Association, and its predecessors in interest, worked upon said vessel as a shipwright in the reconstruction and alteration thereof, between August 15th and September 17th, 1920, working eleven and $\frac{3}{8}$ (11- $\frac{3}{8}$) days, at the agreed rate of \$8.46 per day, and there is now due therefor to the petitioner Fred Skoog the sum of \$95.61.

XXII.

That the petitioner Walter Turnquist, a resident of the City of Seattle, Washington, at the request of said Seattle Trawl Fisheries Association, and its predecessors in interest, worked as a machinist on board said vessel during the reconstruction and alteration of said vessel, in the months of August and September, 1920, and earned during said period \$19.20.

XXIII.

That the petitioner Christ Christensen, a resident of the City of Seattle, Washington, at the request of said Seattle Trawl Fisheries Association, and its predecessors in interest, worked on said vessel during the reconstruction and alteration of said vessel on the 8th, 9th, 10th, 11th and 12th days of September, 1920, at the agreed rate of \$1.00 per hour, and including overtime, worked during said period fifty-two (52) hours, and has been paid on account thereof \$12.00, leaving a balance due of \$40.00 to said petitioner.

XXIV.

That the petitioner J. A. Engstrom, a resident of the City of Seattle, Washington, at the request of said Seattle Trawl Fisheries Association, and its predecessors in interest, between the 7th day of September, 1920, and the 14th day of September, 1920, both inclusive, and between the 20th day of September, 1920, and October 2nd, 1920, worked on said vessel during the reconstruction and alteration thereof as a cook, preparing meals for those engaged in working on said vessel, at the agreed rate of wages of \$6.00 per day, earning during said period \$120.00, and said petitioner has received on account thereof, through the libel proceedings hereinafter set out, the sum of \$84.00, leaving a balance due said petitioner of \$36.00.

XXV.

That the petitioner R. M. Pendleton, a resident of the City of Seattle, Washington, at the request of said Seattle Trawl Fisheries Association, and its predecessors in interest, during the progress of said reconstruction and alteration of said vessel and prior to October 1, 1920, performed work as an engineer and machinist in said reconstruction, earning therefor during said period, after allowing for all payments and credits up to the end of said service, the sum of \$381.75, and since said service was closed said petitioner has received on account the sum of \$74.00, through the libel proceedings hereinafter set out, leaving a balance due said petitioner of \$307.75.

XXVI.

That the petitioner H. G. McLaughlin Co., by agreement with the Seattle Trawl Fisheries Association, and its predecessors in interest, furnished and delivered on board said vessel, in the reconstruction and alteration thereof, an engine hoist and winch, at the agreed price of \$1138.00, of which said petitioner has received the sum of \$500.00, leaving a balance due said petitioner of \$638.00.

XXVII.

That at about the time of the closing of the rendition of said services hereinbefore set out, the said vessel, which had been renamed the George L. Harvey, was seized by the Marshal of the United States for the Western District of Washington under sundry and divers monitions and attachments, in libel proceedings in rem against said vessel, and in said proceedings all of these petitioners were either libelants or intervening libelants, and said proceedings were consolidated in two causes in this Court as follows:

H. G. McLaughlin Co., et al, libelants, vs. Gas Boat Geo. L. Harvey, her tackle, apparel and furniture etc., respondents, Seattle Trawl Fisheries Association, claimant, being cause No. 5608 of the files of this Court; and

J. A. Engstrom, libelant, vs. American Steamer Geo. L. Harvey, her tackle, apparel and furniture, respondent, Seattle Trawl Fisheries Association, claimant, No. 5613, of the files of this Court;

and it was so proceeded in said consolidated causes that all the proofs of testimony were taken, and when the cause was ready for submission to this Court, the United States of America, by its District Attorney for the Western District of Washington, and by written suggestion and motion filed, suggested to the Court and gave it to understand

and be informed that said causes involved property and property rights of the United States and could not be maintained against the United States, and that the liens of libels were not maritime liens and therefore were not within the jurisdiction of this Court sitting in admiralty, and therefore without submitting the rights of the United States to the jurisdiction of the Court, insisting that the Court had no jurisdiction of the subject matter in controversy, either in law or admiralty, and submitting whether in consideration of the premises the Court would take jurisdiction of said causes, said attorney for the United States moved that said bills of libel be set aside and dismissed, and all proceedings in said suits stayed, and prayed for such other orders as might be proper in the premises, and thereupon such proceedings were had in said causes that further proofs were taken therein by the United States Commissioner, to whom the same were referred, and the Court, after argument of proctors, in which argument the attorneys for the United States made the contentions before said Court in said causes that said vessel Geo. L. Harvey, formerly Sub-Chaser No. 293, was a part and parcel of the naval establishment and forces of the United States and not subject to the admiralty and jurisdiction of this Court, and after due consideration had, it was by this Court adjudged and decreed that the said vessel had been properly sold and overruled the objections and contentions of the

United States, and ordered said vessel condemned and sold by the Marshal, in the manner provided by law, for the payment of certain claims which were by the Court held and adjudged to be maritime claims against said vessel, and among other claims, by the decree of said Court, the claim of the petitioner herein Schwabacher Hardware Co. was allowed in the sum of \$97.22, besides costs; and the claim of petitioner herein Axel Olsen was allowed in the sum of \$53.40 besides costs; and the claim of the petitioner herein Charles Martinson was allowed in the sum of \$42.00 besides costs; and the claim of the petitioner herein West Seattle Boat & Engine Co. was allowed in the sum of \$65.00 besides costs; and the claim of the petitioner herein J. A. Engstrom was allowed in the sum of \$84.00 besides costs; and the claim of the petitioner herein R. M. Pendleton was allowed in the sum of \$74, and thereafter and on or about the 30th day of June, 1921, the said claims hereinbefore mentioned, together with other claims which had been likewise allowed by said decree, and for the payment of which said vessel had by said decree been condemned and ordered sold, were by the United States paid and satisfied.

XXVIII.

Thereafter on July 26, 1920, in the Superior Court of Kitsap County, petitioners in the above entitled cause commenced an action, to which John

A. Hoogewerff, then Commandant of the United States Navy Yard at Bremerton, at which Navy Yard in Kitsap County the said vessel then was, was made a party in his individual capacity, and who appeared specially in said cause and established to the Court that he had such vessel in his charge and possession as an officer of the United States Navy, and not otherwise, and said Superior Court thereupon determined that it was without jurisdiction to determine the rights of the petitioners as against said Hoogewerff and dismissed said cause as against said Hoogewerff upon that ground. The United States was not a party to said action.

XXIX.

That said Superior Court appointed a receiver in said cause to take possession of said vessel, who duly qualified and demanded of said Hoogewerff possession of said vessel, which was refused. No other process of attachment or execution against said vessel, or process looking to the seizure thereof, was issued in said cause by said Superior Court of Kitsap County, or asked for by petitioners.

XXX.

The said cause in said Superior Court was duly prosecuted to judgment, which judgment was entered on November 18, 1921, and provided that the said vessel should be sold after giving notice

according to law for the payment of the said amounts therein adjudged and decreed to be due, and which amounts, as set forth in the petition of petitioners, are correct. A true copy of said decree of foreclosure is hereto attached, made a part hereof and marked Petitioners' Exhibit 1.

XXXI.

That the petitioners are all residents of Seattle in said District, or corporations having their offices and places of business therein.

XXXII.

That the said vessel remained in the United States Navy Yard at Bremerton, in Kitsap County, Washington, until February 2, 1922, when the United States, through its Navy Department, sold the said vessel to M. Chechik, of Vancouver, British Columbia, for the sum of seven thousand (\$7000.-00) dollars, and delivered possession to said Chechik, said sale and delivery being to petitioners unknown for some months thereafter.

XXXIII.

That the subsequent documentation of said vessel is shown in petitioners' Exhibits 2 and 3, which are hereto annexed and made a part hereof.

IT IS FURTHER STIPULATED between counsel for the petitioners and for the United States, that

this cause, begun December 21, 1921, be submitted to this Court upon the foregoing facts for its judgment and opinion as to the right of the petitioners to recover against the United States, the petitioners and the United States both, respectively, reserving the right to sue out a writ of error or take an appeal, as allowed by law, from or to the appropriate appellate court, as provided by law for the review of such judgment, as in all other cases.

Dated Seattle, Washington, July 2, 1923.

JAMES KIEFER,
Attorney for Petitioners.

THOS. P. REVELLE,
United States Attorney,

CHARLES P. MORIARTY,
Asst. United States Attorney.

United States of America,
Western District of Washington, } ss.
County of King,

James Kiefer and Charles P. Moriarty, being sworn according to law, do depose and say: That they are attorney, respectively, for petitioners and for the United States in the above entitled Court; that the controversy set out in the foregoing Agreed Statement of Facts is an actual controversy between the parties to said cause.

JAMES KIEFER,
CHARLES P. MORIARTY,

Subscribed and sworn to before me this 2nd day of July, 1923.

S. E. LEITCH,

Deputy Clerk.

Filed in the United States District Court, Western District of Washington, Northern Division, July 2, 1923.

F. M. Harshberger, Clerk,

By S. E. Leitch, Deputy.

PETITIONERS' EXHIBIT 1.

Customs and Excise, Canada.

Port of Vancouver, B. C.,

10th April, 1923.

James Kiefer,
Suite 327 Colman Bldg.,
Seattle, Wash.

Dear Sir:

Sub-chaser 293 (G. L. Harvey).

In answer to your letter dated 10 April, I would say bill of sale shows Meyer Chechik of 808 Board of Trade Building, City of Vancouver, B. C.

This man is traveling at times and was for some time in Winnipeg, Man., and his last com-

munication to me was from his advocates, Barnard & McLeown, 145 St. James Street, Montreal.

Your truly,

G. A. Allen,

Registrar of Shipping.

GEA/SMcS.

283E Pets. Ex. 1.

PETITIONERS' EXHIBIT 2.

Customs and Excise, Canada.

Port of Vancouver, B. C.,

16th March, 1923.

James Kiefer, Esq.,
Suite 327 Colman Bldg.,
Seattle, Wash.

Dear Sir:

Your favor of 15th inst. received and have the honour to inform you that sub-chaser 293 (also known as "George L. Harvey") was sold by the United States Government to M. Chechik, who then transferred it by bill of sale to,—Coal Harbour Wharf & Trading Company Limited, 1701 Georgia Street, West, Vancouver, B. C., which company now appears as the registered owner, being so registered 3rd May, 1922.

This vessel is registered as the "Etta Mack." Official No. 150,649.

Trusting that this information will suit your purpose,

Yours,

Geo. E. Adams,

Assistant Registrar of Shipping.

(Customs, Canada, Collectors Office, March 16,
1923, Vancouver, B. C.)

GEA/SMcS.

283E Petrs. Ex. 2.

Filed November 26, 1921.

Clerk.

By -----
Deputy.

**In the Superior Court of Kitsap County, State
of Washington.**

BACON & MATHESON FORGE CO., JOHN
PAUL LUMBER COMPANY, SCHWABACHER
HARDWARE CO., AXEL OLSEN, CHARLES
MARTINSEN, WEST SEATTLE BOAT & EN-
GINE CO., M. H. MARTINSEN, E. L. MARTIN-
SEN, FRED SKOOG, WALTER TURNQUIST,
CHRIST CHRISTENSEN, J. A. ENGSTROM, R.
M. PENDLETON and H. G. McLAUGHLIN CO.,
Plaintiffs.

vs.

SEATTLE TRAWL FISHERIES ASSOCIATION
and JOHN A. HOOGEWERFF,
Defendants.

No. 6020

DECREE OF FORECLOSURE

In this cause, the default of the defendant
Seattle Trawl Fisheries Association having been

duly entered, and the cause coming on to be heard upon the proofs adduced by the plaintiffs; and

It appearing to the Court that the defendant Seattle Trawl Fisheries Association is, and was at all the time mentioned in the complaint herein, a corporation, existing under and by virtue of the laws of the State of Washington, and the owner and in possession of the vessel formerly known as Sub-Chaser No. 293, and latterly known as the Geo. L. Harvey; and that the plaintiffs Bacon & Matheson Forge Co., John Paul Lumber Company, Schwabacher Hardware Co., West Seattle Boat & Engine Co., and H. G. McLaughlin Co. are and were at the times mentioned in the complaint herein, corporations duly created and existing under and by virtue of the laws of the State of Washington, and have paid all license fees due to the State of Washington to date; and

It further appearing to the Court that between the 11th day of August, 1920, and the 4th day of September, 1920, at the request of the defendant Seattle Trawl Fisheries Association, the Bacon & Matheson Forge Co. furnished iron work and like materials and labor in and about the refitting and alteration of said vessel of the reasonable value of eleven hundred ninety-one and 96/100 (\$1191.96) dollars, no part of which has been paid; and

That the plaintiff John Paul Lumber Company, between July 13th, 1920, and September 10th, 1920,

at the request of said defendant, furnished lumber for use in the alteration of said vessel, of the reasonable value of four hundred thirty-nine and $\frac{4}{100}$ (\$439.04) dollars, no part of which has been paid; and

The the plaintiff Schwabacher Hardware Co., at the request of the said defendant corporation, between August 2nd, 1920, and October 5th, 1920, furnished hardware and other metal goods for use in the refitting and alteration of said vessel of the reasonable value of six hundred ten and $\frac{44}{100}$ (\$610.44) dollars on account of which said plaintiff has received the sum of ninety-seven and $\frac{22}{100}$ (\$97.22) dollars, leaving a balance due of five hundred thirteen and $\frac{22}{100}$ (\$513.22) dollars; and

That the plaintiff Axel Olsen performed labor in and about the reconstruction and alteration of said vessel, at the request of said corporation defendant, in the sum of one hundred thirty-nine and $\frac{40}{100}$ (\$139.40) dollars, of which said plaintiff has received the sum of fifty-three and $\frac{40}{100}$ dollars, leaving a balance due said plaintiff Olsen of eighty-six (\$86.00) dollars; and

That the plaintiff Charles Martinsen performed labor as a shipwright in the reconstruction and alteration of said vessel, at the request of the said corporation defendant, at the agreed rate of wages of ten (\$10.00) dollars per day, between July 29th

and September 7th, 1920, earning during said time three hundred ten (\$310.00) dollars, and also advanced during said time, for and on account of said vessel, at the request of said corporation defendant, the sum of fifty and 25/100 (\$50.25) dollars, no part of which has been paid except the sum of forty-two (\$42.00) dollars, leaving a balance due to said plaintiff Charles Martinsen of three hundred eighteen 25/100 (\$318.25) dollars; and

That the plaintiff West Seattle Boat & Engine Co., in the months of August, September and October, 1920, at the request of the said corporation defendant, furnished materials, dry dock service and dockage, in the alteration and reconstruction of said vessel, of the reasonable value of four hundred sixty-four and 56/100 (\$464.56) dollars, of which there has been paid the sum of sixty-five (\$65.00) dollars, leaving a balance due to said plaintiff West Seattle Boat & Engine Co. of the sum of three hundred ninety-nine and 56/100 (\$399.56) dollars; and

That the plaintiff M. H. Martinsen, at the request of said corporation defendant, worked as a ship carpenter on the reconstruction and alteration of said vessel, between July 29, 1920, and September 11, 1920, and earned during said period the sum of three hundred eighty-five and 11/100 (\$385.-11) dollars, and advanced at the request of the said corporation defendant the sum of four and 75/100

(\$4.75) dollars used on said vessel in said repairs, making a total of three hundred eighty-nine and 86/100 (\$389.86) dollars, all of which is due said plaintiff M. H. Martinsen; and

That the plaintiff E. L. Martinsen, at the request of the said corporation defendant, worked as a shipwright on board said vessel in the reconstruction and alteration of said vessel between July 29th and September 7th, 1920, at the agreed rate of wages of ten (\$10.00) dollars per day, working in all thirty-one (31) days, and advanced for the use of the owners of said vessel, at their request, the sum of twenty-six and 24/100 (\$26.24) dollars, which was used by them for the payment of materials used on board in said reconstruction and alteration, and the whole amount thereof, three hundred thirty-six and 24/100 (\$336.24) dollars is now due said plaintiff E. L. Martinsen; and

That the plaintiff Fred Skoog, at the request of said corporation defendant, worked on said vessel in the reconstruction and alteration thereof as a shipwright between August 15th and September 17th, 1920, working eleven and three-eighths ($11\frac{3}{8}$) days at the agreed rate of eight and 46/100 (\$8.46) dollars per day, and there is now due therefor to the said plaintiff Fred Skoog the sum of ninety-five and 61/100 (\$95.61) dollars, no part of which has been paid; and

That the plaintiff Walter Turnquist, at the request of said corporation defendant, worked as a machinist during the reconstruction and alteration of said vessel, during the months of August and September, 1920, and earned during that period nineteen and 20/100 (\$19.20) dollars, no part of which has been paid; and

That the plaintiff Christ Christensen worked as a rigger during the reconstruction and alteration of said vessel, at the request of the corporation defendant, on the 8th, 9th, 10th, 11th and 12th days of September, 1920, at the agreed rate of wages of one (\$1.00) dollar per hour, and including overtime worked during said period fifty-two (52) hours, and has been paid on account thereof twelve (\$12.00) dollars, leaving a balance of forty (\$40.-00) dollars now due and owing to said plaintiff Christ Christensen; and

That the plaintiff J. A. Engstrom, between the 7th day of September, 1920, and the 14th day of September, 1920, both inclusive, and between the 20th day of September, 1920, and October 2nd, 1920, at the request of said corporation defendant, worked as a cook on said vessel during the reconstruction and alteration thereof preparing meals for those on board her, and earned during said period the sum of one hundred twenty (\$120.-00) dollars, of which eighty-four (\$84.00) dollars have been paid, leaving a balance due said J. A. Engstrom of thirty-six (\$36.00) dollars; and

That plaintiff R. M. Pendleton, at the request of said corporation defendant, between May 2nd, 1920, and October 1st, 1920, performed work as an engineer and machinist in the reconstruction and alteration of said vessel, earning therefor during said period, after allowing for all credits and payments, the sum of three hundred eighty-one and 75/100 (\$381.75) dollars, and since said service was closed said plaintiff Pendleton has received the further sum of seventy-four (\$74.00) dollars, leaving a balance of three hundred seven and 75/100 (\$307.75) dollars due said plaintiff Pendleton; and

That plaintiff H. G. McLaughlin Co., by agreement with the said corporation defendant, furnished an engine hoist and winch for use in the reconstruction and alteration of said vessel, at the agreed price of eleven hundred thirty-eight (\$1138.00) dollars, five hundred (\$500.00) dollars of which has been paid the said plaintiff, leaving a balance due the plaintiff H. G. McLaughlin Co. of six hundred thirty-eight (\$638.00) dollars; and

It further appearing to the Court that all of the services performed and all material furnished by the respective plaintiffs herein, were necessary for the reconstruction and alteration of said vessel, and were furnished upon the credit of said vessel and while she was in King County, and in the possession of her then owners, the defendant Seattle Trawl Fisheries Association and their predecessors

in interest, and that said vessel has since been removed to Kitsap County, and that the plaintiffs each have, and each assert, a claim or lien for said labor performed and material furnished, in accordance with the statutes of the State of Washington in such case made and provided;

NOW THEREFORE, IT IS BY THE COURT HEREBY ORDERED, CONSIDERED, ADJUDGED AND DECREED, AND THE COURT DOES HEREBY ORDER, CONSIDER, ADJUDGE AND DECREE, that the plaintiffs do have and recover of and from the defendant the Seattle Trawl Fisheries Association the following sums:

The plaintiff Bacon & Matheson Forge Co.	
the sum of-----	\$1191.96
The plaintiff John Paul Lumber Co. the	
sum of -----	439.04
The plaintiff Schwabacher Hardware Co.	
the sum of-----	513.22
The plaintiff Axel Olsen the sum of-----	86.00
The plaintiff Charles Martinsen the sum of	318.25
The plaintiff West Seattle Boat & Engine	
Co. the sum of-----	399.56
The plaintiff M. H. Martinsen the sum of	389.86
The plaintiff E. L. Martinsen the sum of	336.24
The plaintiff Fred Skoog the sum of-----	95.61
The plaintiff Walter Turnquist the sum of	19.20

The plaintiff Christ Christensen the sum of	40.00
The plaintiff J. A. Engstrom the sum of--	36.00
The plaintiff R. M. Pendleton the sum of	307.75
The plaintiff H. G. McLaughlin Co. the sum of -----	638.00

together with interest thereon from December 1, 1920, at the legal rate, and plaintiffs' costs and disbursements to be herein taxed, and that the said plaintiffs have a lien upon said vessel to secure said amounts, and that said lien be, and the same is hereby foreclosed; and

IT IS BY THE COURT FURTHER ORDERED, CONSIDERED, ADJUDGED AND DECREED, that the said vessel be sold, after giving notice according to law, for the payment of said amounts herein adjudged and decreed to be due the respective plaintiffs.

Done in open Court, November 18th, 1921.

WALTER M. FRENCH, Judge.

Costs taxed at \$23.00.

283E Pet. Ex. 3.

Recording fee \$1.00 paid June 22, 1921.

Henry H. Henrichs,

Deputy Collector.

BILL OF SALE

Seattle, Washington, May 5, 1921.

The Seattle Trawl Fisheries Association, Inc., a corporation, in consideration of ten (\$10.00) dollars the receipt of which is hereby acknowledged, hereby quitclaims to the United States Government all its right, title and interest in and to the former sub-chasers known as 292, 293 and 300, the 293 having been changed to the George L. Harvey.

Seattle Trawl Fisheries Association, Inc.,

By Geo. L. Harvey, President,

W. F. Wagner, Secretary and Treasurer.

(Seal)

State of Washington {
County of King { ss.

This is to certify that on this 5th day of May, 1921, personally appeared before me, George L. Harvey, the President of the Seattle Trawl Fisheries Association, and acknowledged the foregoing bill of sale to be free and voluntary act and deed of the corporation for the uses and purposes therein mentioned.

Witness my hand and official seal this 5th day of May, 1921.

(Seal)

Moncrieffe Cameron,

Notary Public in and for the State of
Washington, residing at Seattle.

Customs House, Seattle, Wash., June 22, 1921.

Received for record, 2:00 P. M.

Recording Book M8, page 292,

Recording fee \$1.00 paid June 22, 1921.

Henry H. Henrichs,

Act. Deputy Collector.

I certify this to be a true copy of the original
bill of sale on file in this office.

Henry H. Henrichs,

Act. Deputy Collector.

Customs House, Seattle, Wash.

(Customs House Seal)

May 5th, 1923.

283E Govt. Ex. A.

Recording fee \$1.00.

Paid June 22, 1921,

Henry H. Henrichs, Deputy Collector.

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that we,
George L. Harvey and Joseph Kildall, doing business as the Seattle Fisheries Association, a limited partnership and record owners of the following vessels:

U. S. S. submarine chaser No. 293 (said vessel also being known as the "George L. Harvey"),

U. S. S. submarine chaser No. 292, and U. S. S. submarine chaser No. 300, for and in consideration of the sum of one (\$1.00) dollar lawful money of the United States to each of us in hand paid, the receipt whereof we, and each of us, do hereby acknowledge, and other valuable consideration to us and each of us hereto specially moving by us and each of us, our and each of our heirs, executors, administrators and assigns, have demised, released and forever quitclaim, and by these presents do demise, release and forever quitclaim unto the United States of America, all of our right, title and interest in and to U. S. S. submarine chaser No. 293, U. S. S. submarine chaser No. 292, and U. S. S. submarine chaser No. 300, hereby releasing and waiving all rights under and by virtue of the certain transfer of said vessels to us on May twenty-one, Nineteen Hundred Twenty, by the Navy Department of the United States.

Dated this 3rd day of June, 1921.

Seattle Fisheries Association,

George L. Harvey,

Joseph Kildall,

(Seal)

General partners.

State of Washington, {
County of King, { ss.

Before me, a Notary Public in and for the State of Washington, personally appeared George L. Har-

Given under my hand and seal this 3rd day of June, A. D., One Thousand Nine Hundred and Twenty-one.

(Seal) A. C. McDonald,
Notary Public in and for the State of
Washington, residing at Seattle.

Customs House, Seattle, Wash., June 22, 1921.

Received for record, 2:00 P. M.

Recorded Book M8, page 288,

Recording fee \$1.00, paid June 22, 1921.

Henry H. Henrichs, Act. Deputy Collector.

I certify this to be a true copy of the original bill of sale on file in this office.

Henry H. Henrichs,
Act. Deputy Collector.

Customs House, Seattle, Wash.
(Customs House Seal) May 5th, 1923.
283E Govt. Ex. B.

No. 283-E

MEMORANDUM DECISION

Filed July 6, 1923.

James Kiefer, Esq.,
For Petitioners.

Hon. Thos. P. Revelle, U. S. Attorney,

Hon. John A. Frater, Asst. U. S. Attorney,

Hon. Charles P. Moriarty, Asst. U. S. Attorney,
For United States.

CUSHMAN, D. J.

This suit is one against the United States under the Tucker Act and has been submitted to the court upon an agreed statement of facts.

The petitioners cannot recover, unless they have shown by a fair preponderance of evidence, the existence of an implied contract, that is an implied promise on the part of the United States to pay the claims against the property, which it took. If the officers of the Government took under claim of right, there can be no implied contract nor such promise in fact.

The circumstances indicate that the officers took under an adverse claim of right, rather than with

recognition of petitioners' claims. Petitioners cannot recover. Judgment accordingly.

Filed in the United States District Court, Western District of Washington, Northern Division, July 6, 1923.

F. M. Harshberger, Clerk,
By S. E. Leitch, Deputy.

No. 283-E

JUDGMENT OF DISMISSAL

BE IT REMEMBERED that this matter came on duly and regularly before this court upon the application of the United States Attorney, and this case having been duly presented to this Court upon an agreed statement of facts and the court having considered the same and having heretofore, to-wit, on the 6th day of July, 1923, filed a Memorandum Decision holding that the defendant was entitled to Judgment, and it now appearing that a Judgment of Dismissal should be entered, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that petitioners take nothing by this action, that the defendant go hence without day.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs herein to be taxed be and they hereby are awarded in favor of the defendant and against the petitioners.

To all of which the petitioners except and an exception is allowed.

Done in open court this 14th day of July, 1923.

EDWARD E. CUSHMAN,
United States District Judge.

O. K. as to form, JAMES KIEFER,
Attorney for the Petitioners.

Filed in the United States District Court, Western District of Washington, Northern Division, July 14, 1923.

F. M. Harshberger, Clerk,
By S. E. Leitch, Deputy.

No. 283-E

PETITION FOR APPEAL

Bacon & Matheson Forge Co., John Paul Lumber Company, Schwabacher Hardware Co., Axel Olsen, Charles Martinsen, West Seattle Boat & Engine Co., M. H. Martinsen, E. L. Martinsen, Fred Skoog,

Walter Turnquist, Christ Christensen, J. A. Engstrom, R. M. Pendleton and H. G. McLaughlin Co., the petitioners above named, deeming themselves aggrieved by the order and judgment entered on the 14th day of July, 1923, in the above entitled proceedings, do hereby appeal from the said judgment to the United Circuit Court of Appeal for the Ninth Circuit, and pray that a transcript and record of proceedings and papers upon which said judgment is made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial District of the United States.

JAMES KIEFER,

Attorney for Petitioners.

Filed in the United States District Court, Western District of Washington, Northern Division, July 16, 1923.

F. M. Harshberger, Clerk,
By S. E. Leitch, Deputy.

No. 283E

ASSIGNMENTS OF ERROR

Come now the petitioners, Bacon & Matheson Forge Co., John Paul Lumber Company, Schwabacher Hardware Co., Axel Olsen, Charles Martin-

sen, West Seattle Boat & Engine Co., M. H. Martinsen, E. L. Martinsen, Fred Skoog, Walter Turnquist, Christ Christensen, J. A. Engstrom, R. M. Pendleton and H. G. McLaughlin Co., and assign error in the decision of the said District Court as follows:

I.

The said Court erred in holding, concluding and adjudging that the petitioners are not entitled to recover against the United States of America herein.

II.

The Court erred in making its conclusion of law to the effect that the petitioners are not entitled to recover herein.

III.

The Court erred in making and entering its judgment herein dismissing the petition and action of the petitioners, and in entering judgment of dismissal herein against the petitioners.

JAMES KIEFER,
Attorney for Petitioners and Appellants.

Received copy of the foregoing assignments of error, and due service herein admitted, this 16th day of July, 1923.

THOS. P. REVELLE,
United States District Attorney for the Western
District of Washington, and Attorney for the
United States of America.

By JOHN A. FRATER,
Assistant United States Attorney.

Filed in the United States District Court, Western District of Washington, Northern Division, July 16, 1923.

F. M. Harshberger, Clerk,
By S. E. Leitch, Deputy.

No. 283-E

ORDER ALLOWING APPEAL AND FIXING BOND

Now, to-wit, on this 16th day of July, 1923,

IT IS ORDERED, that the appeal be allowed as prayed for upon the petitioners for said appeal executing a bond to the United States in the sum of two hundred fifty (\$250.00) dollars, conditioned that the appellants shall prosecute their appeal

with effect and answer all judgments and costs if they fail to make their plea good.

EDWARD E. CUSHMAN,
District Judge.

Filed in the United States District Court, Western District of Washington, Northern Division, July 16, 1923.

F. M. Harshberger, Clerk,
By S. E. Leitch, Deputy.

No. 283-E

NOTICE OF APPEAL

To the United States of America and to the Attorney General of the United States, and to Hon. Thos. P. Revelle, United States Attorney for the Western District of Washington, and to Hon. John A. Frater and to Hon. Chas. P. Moriarty, Assistant United States Attorneys for the Western District of Washington, and Attorneys for the United States in the Above Entitled Cause:

You, and each of you, are hereby notified that Bacon & Matheson Forge Co., John Paul Lumber Company, Schwabacher Hardware Co., Axel Olsen, Charles Martinsen, West Seattle Boat & Engine Co., M. H. Martinsen, E. L. Martinsen, Fred Skoog,

Walter Turnquist, Christ Christensen, J. A. Engstrom, R. M. Pendleton and H. G. McLaughlin Co., petitioners above named, hereby and now appeal from that certain order, judgment and decree made herein by the above entitled Court on the 14th day of July, 1923, adjudging, holding, finding and decreeing that the amended petition of the petitioners herein be dismissed, and that the said petitioners take nothing thereby, and from the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit.

JAMES KIEFER,

Attorney for said Petitioners and Appellants.

Received copy of foregoing Notice of Appeal and due service is hereby admitted this 16th day of July, 1923.

THOS. P. REVELLE,

United States District Attorney for the
Western District of Washington,

By JOHN A. FRATER,

Asst. United States District Attorney.

Filed in the United States District Court, Western District of Washington, Northern Division, July 16, 1923.

F. M. Harshberger, Clerk,

By S. E. Leitch, Deputy.

No. 283-E

CITATION

To the United States of America and to the Attorney General of the United States, and to Hon. Thos. P. Revelle, United States Attorney for the Western District of Washington, and to Hon. John A. Frater and to Hon. Chas. P. Moriarty, Assistant United States Attorneys for the Western District of Washington, and Attorneys for the United States in the Above Entitled Cause:

WHEREAS, Bacon & Matheson Forge Co., John Paul Lumber Company, Schwabacher Hardware Co., Axel Olsen, Charles Martinsen, West Seattle Boat & Engine Co., M. H. Martinsen, E. L. Martinsen, Fred Skoog, Walter Turnquist, Christ Christensen, J. A. Engstrom, R. M. Pendleton and H. G. McLaughlin Co., have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment, order and decree lately rendered in the District Court of the United States for the Western District of Washington, made in favor of the United States, adjudging and decreeing that the petition of said above named petitioners be dismissed and that they take nothing thereby, and having filed the security required by law and the order of said Court, you are therefore cited to appear before the said United States Circuit Court of Appeals, in the City of San Francisco,

State of California, on the 31st day of July next, to do and receive what may obtain to justice to be done in the premises.

GIVEN under my hand at the City of Seattle, in the Ninth Circuit, this 16th day of July, in the year of our Lord, One Thousand Nine Hundred and Twenty-three, and the Independence of the United States the One Hundred and Forty-eighth.

EDWARD E. CUSHMAN,
Judge of the United States District Court for
the Western District of Washington.

Received copy of foregoing Citation and due service is hereby admitted, this 16th day of July, 1923.

THOS. P. REVELLE,
United States District Attorney for the
Western District of Washington.

By JOHN A. FRATER,
Asst. United States District Attorney.

Filed in the United States District Court, Western District of Washington, Northern Division, July 16, 1923.

F. M. Harshberger, Clerk,
By S. E. Leitch, Deputy.

No. 283-E

APPEAL BOND

KNOW ALL MEN BY THESE PRESENTS: That we, Bacon & Matheson Forge Co., John Paul Lumber Company, Schwabacher Hardware Co., Axel Olsen, Charles Martinsen, West Seattle Boat & Engine Co., M. H. Martinsen, E. L. Martinsen, Fred Skoog, Walter Turnquist, Christ Christensen, J. A. Engstrom, R. M. Pendleton and H. G. McLaughlin Co., as principals, and the National Surety Co., a surety corporation under the laws of the State of New York, and lawfully doing business in the State of Washington, are held and firmly bound to the United States of America, in the full and just sum of two hundred fifty (\$250.00) dollars, to be paid to the United States of America, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 16th day of July, in the Year of Our Lord One Thousand Nine Hundred Twenty-three.

WHEREAS, lately at a District Court of the United States for the Western District of Washington, Northern Division, in a proceeding pending in said Court, to-wit, a petition by the above named principals against the United States of America, de-

fendant, the Court upon final hearing made and entered a judgment and decree in said cause dismissing the same and denying the petitioners any relief; and

WHEREAS, the above named principals have appealed from said judgment and decree in said cause to the Circuit Court of Appeals for the Ninth Circuit, and have obtained a citation directed to the United States and to the Attorney General thereof, and to the United States District Attorney for the Western District of Washington, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in said Circuit, on the 31st day of July next.

Now the condition of this obligation is such that if the said Bacon & Matheson Forge Co., John Paul Lumber Company, Schwabacher Hardware Co., Axel Olsen, Charles Martinsen, West Seattle Boat & Engine Co., M. H. Martinsen, E. L. Martinsen, Fred Skoog, Walter Turnquist, Christ Christensen, J. A. Engstrom, R. M. Pendleton and H. G. McLaughlin Co., shall prosecute their said appeal to effect and answer all damages and costs, if they fail to make the said plea good, then this obliga-

tion to be void, else to be and remain in full force and virtue.

Bacon & Matheson Forge Co.,
John Paul Lumber Company,
Schwabacher Hardware Co.,
Axel Olsen,
Charles Martinsen,
West Seattle Boat & Engine Co.,
M. H. Martinsen,
Fred Skoog
Walter Turnquist,
Christ Christensen,
J. A .Engstrom,
R. M. Pendleton,
H. G. McLaughlin,
E. L. Martinsen,

By James Kiefer,
Their Attorney.

NATIONAL SURETY COMPANY
By C. E. White, in the presence of:
Resident Vice President
J. Grant,
Resident Assistant Secretary.

July 16, 1923, foregoing bond approved.

EDWARD E. CUSHMAN, Judge.

Filed in the United States District Court, Western District of Washington, Northern Division, July 16, 1923.

F. M. Harshberger, Clerk,
By S. E. Leitch, Deputy.

**In the District Court of the United States for
the Western District of Washington, North-
ern Division.**

No. 283-E

BACON & MATHESON FORGE CO., JOHN
PAUL LUMBER COMPANY, SCHWABACHER
HARDWARE CO., AXEL OLSEN, CHARLES
MARTINSEN, WEST SEATTLE BOAT & EN-
GINE CO., M. H. MARTINSEN, E. L. MARTIN-
SEN, FRED SKOOG, WALTER TURNQUIST,
CHRIST CHRISTENSEN, J. A. ENGSTROM, R.
M. PENDLETON and H. G. McLAUGHLIN CO.,
Petitioners.

vs.

UNITED STATES OF AMERICA,

STIPULATION AS TO RECORD

IT IS STIPULATED, by and between the petitioners,
by their attorney, and the United States, by its
attorneys, that this cause was begun by filing of
the petition, and thereafter an amended petition,
under the Act of March 3, 1887, commonly known
as the Tucker Act; that due and proper service
was made; that the United States appeared in due

course and answered, and that this cause was submitted upon an Agreed Statement of Facts which superceded the pleadings in the cause;

That the Record on Appeal shall be made up of the following papers:

Agreed Statement of Facts, filed July 2, 1923;
Memorandum Decision of the Court;
Judgment of Dismissal; and
Appeal Papers;

and that in certifying and printing the record the caption, after the first appearance thereof in the record, may be omitted.

Dated Seattle, Washington, July 17, 1923.

JAMES KIEFER,
Attorney for Petitioners.

THOS. P. REVELLE,
United States District Attorney for the
Western District of Washington, and
Attorney for the United States.

By JOHN A. FRATER,
Asst. United States District Attorney.

Filed in the United States District Court, Western District of Washington, Northern Division, July 16, 1923.

F. M. Harshberger, Clerk,
By S. E. Leitch, Deputy.

CLERK'S CERTIFICATE

Western District of Washington, }
United States of America, } ss.

I, F. M. Harshberger, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify the foregoing 57 printed pages, 1405 inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause, as same appears upon the record of this cause and appeal, and as the same remain of record and on file in the office of the Clerk of said Court, and that the same constitute the record on appeal from the order, judgment and decree of the District Court of the United States for the Western District of Washington to the Circuit Court of Appeals for the Ninth Circuit, according to stipulation as to record between counsel for parties.

I further certify that I hereto attach and herewith transmit the original citation in this cause.

I further certify that the cost of preparing the foregoing record on appeal, and printing the same, is the sum of \$92.60, to-wit: \$11.60 Clerk's fees and \$81 printing, and that the said sum has been paid by James Kiefer, Attorney for Appellants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court at Seattle, in said District, on this 27th day of July, 1923.

F. M. HARSHBERGER,
Clerk of the United States District Court for
the Western District of Washington.

